



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

EAG/AL
F.#2010R00153

271 Cadman Plaza East
Brooklyn, New York 11201

December 30, 2011

By Hand Delivery and ECF

Cheryl M. Fiorillo
Senior U.S. Probation Officer
United States Probation Department
147 Pierrepont Street
Brooklyn, New York 11201

Re: United States v. Scott Fappiano
Criminal Docket No. 11-30 (KAM)

Dear Officer Fiorillo:

The government respectfully writes in response to the defendant's letter dated December 22, 2011, setting forth objections to information contained in the Presentence Investigation Report (the "PSR") submitted in the above-captioned case on December 8, 2011.

The government submits that the information contained in paragraphs 3 to 8, 47 and 100 of the PSR is properly included. The defendant's association with the Colombo organized crime family, described in paragraphs 3 to 8, is directly related to the crime to which the defendant pleaded guilty. In particular, the defendant and his coconspirators, who were all members and/or associates of the Colombo crime family, exploited their reputations in the crime family in using extortionate means to collect the debt owed to the defendant.

The criminal conduct described in paragraphs 47 and 100 is also properly included in the PSR because it is conduct that the Court may consider under 18 U.S.C. 3553(a). As the Second Circuit has observed, "Section 3553(a)(1), in particular, is worded broadly, and it contains no express limitations as to what 'history and characteristics of the defendant' are relevant." United States v. Fernandez, 443 F.3d 19, 33 (2d Cir. 2006); see also United States v. Gill, 523 F.3d 107, 109 (2d Cir. 2008) ("[A] special condition of supervised release is permissible -- even if it relates to a prior crime -- provided that the

condition is reasonably related to the defendant's history and characteristics, or is imposed to deter or punish the defendant, or to protect the community."); United States v. Dupes, 513 F.3d 338, 344 (2d Cir. 2008) (holding that district court properly imposed, on a defendant convicted of securities fraud, special conditions of supervised release that were "reasonably related to [his] history and characteristics as a sex offender, his need for treatment, and the public's need for protection from him").

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

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cc: Hon. Kiyo A. Matsumoto (by ECF and Hand Delivery)
Harlan J. Protass, Esq. (by ECF)
Clerk of the Court (KAM) (by ECF)